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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------------|
| 10/657,650 | 09/08/2003 | Larry J. Pacey | 47079-00134USPT | 2836 |
| 70243 | 7590 | 05/30/2007 | | |
| NIXON PEABODY LLP 161 N CLARK ST. 48TH FLOOR CHICAGO, IL 60601-3213 | | | EXAMINER HOEL, MATTHEW D | |
| | | | ART UNIT 3714 | PAPER NUMBER |
| | | | MAIL DATE 05/30/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|---|-------------------------------|------------------------------|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/657,650 | Applicant(s) PACEY ET AL. | |
| | Examiner Matthew D. Hoel | Art Unit 3714 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-29.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


XUAN M. THAI
SUPERVISORY PATENT EXAMINER

TC3700

Continuation of 11. does NOT place the application in condition for allowance because: The passage on Page 14 of the "Remarks" demonstrates the examiner's point regarding simulation rule data and physical object data: "The Final Office Action then asserts that card games are games of skill. The specification is obviously not relevant to determining whether a specific element of the pending claims is present in cited references. However, the deal of the card is not a player controlled event as all such games do not allow a player to select the value of the card or cards to be dealt as in Blackjack or Poker. Instead, the claims related to a card game which only displays outcomes using physical object data (i.e., the motion of a card being dealt) and the simulation rule data (the value of the card when landing turned up). A player would not exercise any skill for such a game." The Scarne reference cited by the examiner illustrates otherwise (suggested strategy, pages 49-55, 285-288). Luciano ('895) teaches blackjack and poker, which are strategy games (6:57). Kinoshita also teaches this (5967894, Abst.). The card games of Luciano would thus suggest the simulation rule data and physical object data pertaining to the card game as well as the game of skill. While Luciano did not explicitly cite physical object data and simulation rule data, it is analogous art to Oshima for the reasons outlined in the final rejection. Luciano also cites a roulette wheel game (6:53). Such a game would have simulation rule data and physical object data and would function in the manner of the previously cited Fentz reference (5775993). The interaction of the roulette wheel and ball would follow the physical object data and simulation rule data to arrive at the randomly selected outcome (see page 6, 6/7/2006 action). This would be in addition to Luciano's selection of the paytable based on (odds stay same, but payouts increase or decrease with player's skill) the player's skill in the base game involving dexterity in a physical object/simulation rule data game. The examiner respectfully disagrees with the applicants as to the claims' condition for allowability.